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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,517	03/04/2002	Bradley Steven Resch	8866	6459

27752 7590 02/23/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,517

Applicant(s)

RESCH ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/22/02, 06/26/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 13 and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper submitted November 17, 2003.

2. Applicant's election with traverse of invention group I, claims 1-12, 14-24 and 26 in Paper submitted November 17, 2003 is acknowledged. The traversal is on the ground(s) that search of all the claimed inventions is not an undue burden. This is not found persuasive because these inventions are distinct for the reasons given in the prior office action and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

3. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-6, 9-11, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Yanagida et al. (US 6,024,941).

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6. Yanagida et al. teaches stable cosmetic compositions wherein vitamin A is stable. The compositions further comprise phenol compounds, such as BHT, BHA, or hydroxy substituted benzophenone; EDTA, and other well-known cosmetic ingredients, such as vitamin E, glycerine, polyethylene glycol, polypropylene glycol, fatty acid, and perfume. See, e.g., table 1, 6-2; examples 2-5, 3-7, 4-4, 4-7, 5-4, and the claims

7. Claims 1, 3-6 ,9, 10, 14, 16, 18, 19, 22, 24, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Deckers et al. (US 6,582,710).

8. Deckers et al. teach a cosmetic composition comprising vitamin A and phenol compounds BHA and BHT. The composition further comprises other cosmetic ingredients. See, example 12.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 14-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagida et al. (US 6,024,941), in view of Oblong et al. (US 5,939,082) and Bissett et al. (US 5,821,237).

10. Yanagida et al. teaches stable cosmetic compositions wherein vitamin A is stabilized by one stabilizer wherein the stabilizer is selected from a groups of compounds including phenols, vitamin E, C, salicylic acid. The compositions may further comprise EDTA, and other well-known cosmetic ingredients, such as vitamin E, glycerine, polyethylene glycol, polypropylene

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glycol, fatty acid, and perfume. See, particularly, the abstract, table 1, 6-2; examples 2-5, 3-7, 4-4, 4-7, 5-4, and the claims.

11. Yanagida et al. do not teach expressly to exclude parahydroxybenzoic acid ester, or formaldehyde and formaldehyde donating compounds, or employ particular vitamin A derivatives herein, such as retinyl propionate, or employ particular preservative, such as O-phenylphenol.

12. However, as shows in the claims and the examples, Yanagida et al. do not require the present of parahydroxybenzoic acid ester, or formaldehyde, or its donating compounds. Oblong teaches that synthetic or natural vitamin analog, such as retinol esters, e.g., retinyl propionate, are well known in the art for use as vitamin A in cosmetic compositions. See, particularly, column 22, lines 26-52. Bissett et al. teaches that the preservatives herein employed, such as O-phenylphenol, dehydroacetic acid, are well-known preservatives for cosmetic compositions, particularly, those comprise vitamin A. Bisset further teaches that substantially free of formaldehyde or formaldehyde donating compound is essential for the stability of cosmetic composition. See, particularly, column 15, line 1 to column 16, lines 16.

Therefore, it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make a vitamin A containing cosmetic composition without using parahydroxybenzoic acid ester and formaldehyde donating compounds, and employ O-phenylphenol as a preservative and retinyl propionate as vitamin A compound.

A person of ordinary skill in the art would have been motivated to make a vitamin A containing cosmetic composition without using parahydroxybenzoic acid ester and formaldehyde donating

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compounds, and employ O-phenylphenol as a preservative and retinyl propionate as vitamin A compound because parahydroxybenzoic acid ester is not required in the vitamin a containing cosmetic composition, and formaldehyde is known to destabilize cosmetic composition. Further, use a preservative in a cosmetic composition, particularly well-known preservative, is obvious because of its known utility. The employment of a particular retinoid, e.g., retinyl propionate, is seen to be a selection from amongst equally suitable material and as such obvious. Ex parte Winters 11 USPQ 2nd 1387 (at 1388).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (571)272-0632. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571)272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Primary Examiner


SHENGJUN WANG
Primary Examiner
Shengjun Wang

February 18, 2004